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DEPARTMENT OF EDUCATION
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**FISCAL YEAR 2014
CHILD AND ADULT CARE FOOD PROGRAM
FAMILY DAY CARE HOME SPONSOR MEMORANDUM #8**

TO: Family Day Care Home Sponsors

FROM: Kyle L. Guerrant, Director
Office of School Support Services

DATE: February 4, 2014

SUBJECT: Guidance for Suspension and the Serious Deficiency Process

ACTION: Serious deficiencies due to health and safety issues must be followed through to termination regardless of the outcome of the Bureau of Children and Adult Licensing (BCAL) process

This memorandum provides guidance and clarification regarding the suspension and the serious deficiency process for serious health and safety violations. **A suspension is the only time a sponsoring organization can stop paying the provider before giving them the opportunity to correct the problems and appeal the termination.**

A. Suspension Process for Providers

If Michigan Department of Education's (MDE) Child and Adult Care Food Program (CACFP) or Bureau of Children and Adult Licensing (BCAL) cite a provider for violations, the sponsoring organization must take action when it learns of the concerns, even though BCAL has not yet taken formal action to revoke the provider's licensure or approval. When MDE receives citation or revocation alerts from BCAL, MDE provides the information to the sponsoring organization.

Even if the proper authorities indicate that it is safe for the monitor to leave a provider while they conduct further investigation or inquiry, the monitor and sponsoring organization should still initiate a suspension and the serious deficiency process. MDE expects sponsoring organizations to take immediate action to stop payments and suspend the provider's CACFP participation and declare the provider seriously deficient, regardless of any formal procedures pending or underway by the licensing authorities to revoke the provider's license or approval [CACFP 13-2013, *Health and Safety in the Child and Adult Care Food Program*, July 26, 2013].

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If the sponsoring organization determines that there is an imminent threat to the health or safety of participants at the provider's home or that the provider has engaged in activities that threaten public health or safety, the sponsoring organization must immediately notify MDE or BCAL. If BCAL cannot make an immediate onsite visit, the sponsoring organization will take action that is consistent with the recommendations and requirements of BCAL.

B. Notice of Serious Deficiency, Suspension, and Proposed Termination Procedures for Providers

Once a health or safety threat has been established, the sponsoring organization must notify the provider in writing that he or she has been suspended from CACFP participation, that he or she has been determined seriously deficient, and that the sponsoring organization is proposing to terminate the provider's agreement for cause. The notice must state:

- The serious deficiencies found
- That the provider may only appeal the proposed termination
- That participation, including all CACFP payments, is suspended until the CACFP appeal is concluded
- That if the hearing official overturns the suspension, the provider may claim reimbursement for eligible meals served during the suspension
- That termination from CACFP will result in the provider being placed on the National Disqualification List (NDL)
- That the provider's voluntary termination of its agreement with the sponsoring organization after receiving the notification will still result in the provider's formal termination by the sponsoring organization and placement on the NDL
- The sponsoring organization's appeals procedures 7 CFR 226.16(l)(4)(ii)(A)–(E)

Refer to Prototype Letter H: Notice of Combined Serious Deficiency, Suspension, Proposed Termination, and Proposed Disqualification. A copy of the letter issued to the provider must be provided to MDE.

C. Agreement Termination and Disqualification of a Provider

The sponsoring organization will immediately terminate the provider's agreement and disqualify the provider when the hearing official upholds the sponsoring organization's suspension, proposed termination, and proposed disqualification. At the same time, the notice of termination and disqualification is issued to the provider 7 CFR 226.16(l)(4)(iii). The notice must state:

- That the provider has been terminated from CACFP
- That the provider will be added to the NDL

If the provider does not request an appeal of the proposed termination and proposed disqualification, the sponsoring organization will immediately terminate the provider's agreement and disqualify the Family Day Care Home provider when the opportunity to request the appeal expires. At the same time, the notice of termination and disqualification is issued to the provider.

Refer to Prototype Letter I: Notice of Termination and Disqualification: Imminent Threat to Health and Safety (following failure to appeal). A copy of the letter issued to the provider must be provided to MDE.

If the provider requests an appeal and subsequently loses that appeal, the sponsoring organization will immediately terminate the provider's agreement and disqualify the provider when the decision of the appeal official is issued. At that time, the notice of termination and disqualification is issued to the provider.

Refer to Prototype Letter J: Notice of Termination and Disqualification: Imminent Threat to Health and Safety (after sponsor wins appeal). A copy of the letter issued to the provider must be provided to MDE.

MDE will report the name of the terminated and disqualified provider to the Food and Nutrition Service Regional Office within 10 days of receipt from the sponsoring organization after the provider has been terminated for cause, placing his or her name on the NDL.

If the provider requests an appeal and the hearing official overturns the sponsoring organization's action to suspend the provider, the sponsoring organization must temporarily defer the serious deficiency and withdraw the suspension.

Refer to Prototype Letter K: Notice of Temporary Deferment of Serious Deficiency, Rescission of Suspension, Proposed Termination and Proposed Disqualification: Imminent Threat to Health and Safety (provider wins appeal). A copy of the letter issued to the provider must be provided to MDE.

D. Program Payments during the Suspension of a Provider

A sponsoring organization is prohibited from making any CACFP payments to the provider that has been suspended until any appeal of the proposed termination is completed. If the suspended provider prevails in the appeal of the proposed termination, the sponsoring organization must reimburse the provider for all eligible meals served during the suspension period that are properly documented 7 CFR 226.16(l)(4)(iv). If the provider loses the appeal, payments are not to be made to the provider.

The following documents are available on the Michigan Department of Education CACFP website at www.michigan.gov/cacfp under Forms & Instructions, Family Day Care Home Sponsors. Please contact MDE's CACFP Office at (517) 373-7391 if you have any questions.

Attachments:

- Prototype Letter H: [Notice of Combined Serious Deficiency, Suspension, Proposed Termination, and Proposed Disqualification: Imminent Threat to Health and Safety](#)
- Prototype Letter I: [Notice of Termination and Disqualification: Imminent Threat to Health and Safety \(following failure to appeal\)](#)
- Prototype Letter J: [Notice of Termination and Disqualification: Imminent Threat to Health and Safety \(after sponsor wins appeal\)](#)
- Prototype Letter K: [Notice of Temporary Deferment of Serious Deficiency, Rescission of Suspension, Proposed Termination and Proposed Disqualification: Imminent Threat to Health or Safety \(after provider wins appeal\)](#)